

UTAH DEPARTMENT OF TRANSPORTATION

FLEXIBLE MATCH ON FEDERAL-AID PROJECT

1.0 UDOT FLEXIBLE MATCH GUIDELINES FOR FEDERAL-AID PROJECTS

1.1 General

Flexible match allows a variety of public and private contributions to be counted toward the non-Federal match for Federal-aid projects. Any project using flexible match must comply with all provisions that apply to any other Federal-aid highway project. It is necessary to obtain approval for the use of flexible match from the FHWA Division Office beforehand. Most of the conditions related to the use of flexible match concern the types of contributions that are eligible to offset the standard non-Federal matching requirements. The critical part of this eligibility determination is the combination of the source of the contribution (private, local, state, or Federal) and the nature of the contribution (cash, materials, land, services, or buildings and equipment). The table below lists the basic tests to determine whether a given non-Federal contribution can satisfy Federal-aid matching requirements under the flexible match provisions.

Type of Donation	Source of Donation	Conditions
Funds	Private – Yes	Funds must be received during the period between project approval and submittal of final voucher.
	State – Yes	Same as above
	Local Govt. – Yes	Same as above
Land (Right of Way)	Private – Yes	Property must be appraised to determine fair market value. Value must be included in total project cost. Property may be donated anytime during the project development. Donation does not influence environmental assessment. Comply with 23 CFR 710.505 and 23 U.S.C 323
	State - Yes	Same as above Comply with 23 CFR 710.507 and 710.501(b)
	Local Govt. – Yes	Same as above Comply with 23 CFR 710.507 and 710.501(b)

Refer to the following for additional information on land contributions and donations:
FHWA Office of Real Estate Services at www.fhwa.dot.gov/realstate/pdg6.htm
23 CFR 710.505 and 710.507 at www.gpoaccess.gov/cfr/retrieve.html
23 U.S.C 323 at <http://uscode.house.gov/search/criteria.php>

Materials	Private – Yes	Materials must be appraised to determine fair market value
	State – No	
	Local Govt. - Yes	Materials must be appraised to determine fair market value
Services	Private – Yes	Grantee must document the market value of services.
	State – Limited	Publicly-contributed services count toward match for only Transportation Enhancement projects.
	Local Govt. - Limited	Publicly-contributed service count toward match for only Transportation Enhancement projects.

Information Source: Federal Highway Administration Innovative Finance Primer Chapter 2
www.fhwa.dot.gov/innovativefinance/ifp/index.htm

1.2 Federal-To-Federal Match

The table below discusses the conditions to use other Federal funds to satisfy the Federal-aid highway matching requirements.

Source of Federal Grant Funding	Eligible Categories of Highway Projects
Federal Land Management Agencies including but not limited to: U.S. Forest Service Bureau of Indian Affairs Bureau of Reclamation Bureau of Land Management National Park Service Numerous military agencies	Federal highway projects funded under the following program categories: Interstate Maintenance National Highway System Surface Transportation Program Congestion Mitigation and Air Quality Program Recreational Trails Program Scenic Byways Programs (providing access to Federal or Indian Lands)
Authorized at 23 U.S.C 120(k)	
Federal Lands Highway Program	Federal highway projects funded under the programs shown above and that serve or provide access to Federal or Indian lands, except Scenic Byways.
Authorized at 23 U.S.C. 120(l)	
Federal programs with special legislative authorization to match other Federal Funds, including funds provided under: State and Local Assistance Act HUD Community Development Block Grants Public Works Employment Act of 1976 Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988.	Any Federal-aid highway project.

Information Source: Federal Highway Administration Innovative Finance Primer Chapter 2
www.fhwa.dot.gov/innovativefinance/ifp/index.htm

1.3 Authority

Provisions in the NHS Act and TEA-21 introduced new flexibility to the Federal-Aid Highway Program's matching requirements by allowing certain public donations of cash, materials, and services to satisfy the non-Federal matching requirement. The majority of flexible match opportunities now available were authorized under Section 322 of the NHS Act and are codified at Section 323 of Title 23. TEA-21 broadened the states' flexible matching options by expanding the opportunity to match Federal highway funds with certain other types of Federal funds. These changes are codified principally at Sections 120(k), 120(l), and 133(e) (5) © of Title 23.

Information Source: Federal Highway Administration Innovative Finance Primer Chapter 2

1.4 Flexible Match - Steps in the Process

1. **Identify Candidate Project** - Identify candidate Federal-aid project for flexible match during project development phase.
2. **Flexible Match Eligibility Determination** - Local Government responsible for eligibility determination whether a given contribution can satisfy Federal-aid matching requirements under the flexible match provisions. Any project using flexible match must also comply with all provisions that apply to any other Federal-aid highway project.
3. **Flexible Match Proposal** - Local Government works with UDOT project manager to prepare UDOT flexible match proposal form identifying the funds, materials, property, services, or eligible Federal grant funding. Local Government should determine and document the fair market value of the non-monetary contributions as detailed in section 1.7.
4. **Submit Flexible Match Proposal** - Flexible match proposals for services, materials, or Federal grant funding should be submitted to the UDOT Program Development Local Government Programs Engineer. Flexible match proposals for contributions or donations of real property should be submitted to UDOT Division of Right of Way Assistant Director.
5. **Review and Approval of Proposal** - UDOT and FHWA Division Office reviews for approval proposed flexible match and valuation. Program Development notifies UDOT project manager if approved and enters flexible match for project in Federal FMIS system.
6. **Document in Cooperative Agreement** - Project Manager and Local Government must document approved flexible match in project cooperative agreement during project development. The following information on flexible match must be identified in the cooperative agreement.

Source:	Who is providing the donation?
Type:	Is it cash, materials, property, and/ or services?
Description:	What materials, property, and/ or services are being provided?
Amount:	What is the valuation of the in-kind donations?

The process for calculation of donation credit for non-Federal match is detailed in section 1.8.

7. **Donation Complete** – Non-Federal funds or materials are used on project, documented, and applied as match upon certification by local government.
8. **Donation Certification** - Local Government completes appropriate UDOT donation certification form upon completion of contribution. The donation certification form and supporting documents must be forward to UDOT project manager for review and signature. Project manager should forward copies of documents to Comptrollers Office in order for credit to be applied toward match. The certification process is detailed in section 1.7.
9. **FHWA Reimbursement** – FHWA reimburses Federal share of costs.

10. **Records Retention** - Local Government maintains flexible match documentation for period of three years after submittal of final voucher to FHWA for Federal-aid project.

1.5 Eligibility Period for Approved Flexible Match

Flexible match must be approved by FHWA Division Office and documented in the cooperative agreement during the project development phase. Donations, except donations of land, must be made after the date the project receives FHWA approval to proceed with the project using flexible match, but prior to approval of the final reimbursement voucher. Land may be donated anytime during the project development.

Information Source: Federal Highway Administration Innovative Finance Primer Chapter 2

Land contributions by local governments must have a project agreement executed on or after June 9, 1998. A donation made prior to the approval of any environmental document required by NEPA is subject to certain restrictions as specified in 23 U.S.C 323(d). Refer to the Office of Real Estate Services Project Development Guide on Donations and Credits at www.fhwa.dot.gov/realstate/pdg6.htm and 23 U.S.C 323 at <http://uscode.house.gov/search/criteria.php> for detailed information on these restrictions.

1.6 Transportation Enhancement Provisions

It is important to recognize that these provisions apply only to Transportation Enhancement activities identified in the legislation and funded from TE set-aside funds.

23 U.S.C. 323 provides for the allowance of credit for donations of funds, materials, land or services. TEA-21 goes on to allow the consideration of the value of contributions. The value of "other contributions" may be credited toward the non-Federal share of TE projects funded with TE funds. These include:

The value of local and State government services, materials, and land applied to the project.

The costs of preliminary engineering prior to project approval.

Such a credit may be allowed provided that appropriate documentation in support of such expenditures would be available for review as needed by FHWA. Where the cost of these services is incurred prior to approval of the applicable TE project, only the value of expenses determined to be reasonable, in coordination with the FHWA Division Office, will be allowed to be used toward the local match. In addition, if the costs incurred represent payment for consultant services, the credit will only be allowed if these consultant services have been secured in accordance with the requirements in 23 CFR 172.

Information Source: FHWA Final Guidance Transportation Enhancement Activities 23 U.S.C. and TEA-21 www.fhwa.dot.gov/environment/te/guidance.htm

1.7 Valuation and Certification of Donations

Donations applied to the non-Federal match must be documented and certified by the local government. Donation records must show how the value placed on in-kind materials, services and real property was derived. Once the approved flexible match has been used on the project the local government should complete the UDOT certification form for donations to a Federal-aid project. There is a separate certification form for contributions of real property to a Federal-aid project. The certification form and supporting documentation should be forward to UDOT project manager for review and signature. The project manager will forward to UDOT Comptrollers Office in order for credit to be applied toward match. Documentation must be maintained by local government and subject to an audit for a period of three years after submittal of project final voucher to FHWA.

Services – Third party donated labor must meet project eligibility requirements and be valued at a rate consistent with those ordinarily paid for similar work in the donor's organization. If the donor does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in that location.

To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs, i.e., time sheets, time cards, etc. This is reiterated in OMB Circular A-87, Attachment B Section 8(i) Donated Services and Title 49 CFR 18.24

Information Source: Guidance on Section 322 of the NHS Act Third Party Donations of Funds, Materials, or Services for Federally Assisted Projects
www.fhwa.dot.gov/innovativefinance/sc322510.htm

The eligibility of local government contributed services are limited toward flexible match for only Transportation Enhancement projects. Overhead costs and elected official's time are not eligible toward match.

Materials - Donated materials must meet project eligibility requirements and be valued at their market value at the time of donation.

Equipment – Donated equipment will be valued at the fair market rental value or reasonable use rates.

Real Property State and Local Contributions – Must satisfy the regulations in Title 23 Code of Federal Regulations 710.507 State and local contributions, 710.501 early acquisition and 23 U.S.C 323 on donations and credits. Refer to the Federal regulations Title 23 CFR 710.507 and 710.501 at www.gpoaccess.gov/cfr/retrieve.html and 23 U.S.C 323 at <http://uscode.house.gov/search/criteria.php>

The allowable credit for a local government contribution is limited to the current fair market value and does not include cost associated with the early acquisition such as relocation expenses, property management costs, and costs incidental to purchase, e.g., appraisal fees, recording costs, etc. A credit cannot exceed the matching share required by the project agreement. Credits can be applied to projects where the initial project agreement is executed after June 9, 1998. Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes. The acquisition must have satisfied the conditions in 23 CFR 710.501(b), and documentation justifies the amount of credit.

The local government must provide documentation for real property contributions which includes: (1) certification by the agency that the acquisition satisfied the conditions in Title 23 CFR 710.507 and 23 CFR 710.501(b), and (2) evidence supporting the current fair market value (e.g., copies of the Certificates of Value or Review Appraiser Statements).

Refer to the following for additional information and guidance on real property contributions:

FHWA Office of Real Estate Services–Project Development Guide at www.fhwa.dot.gov/realstate/pdq6.htm

Contact the UDOT Division of Right of Way

Real Property Donations – Must satisfy the regulations in Title 23 Code of Federal Regulations 710.505 on real property donations and 23 U.S.C 323 on donations and credits. Refer to the Federal regulations 23 CFR 710.505 at www.gpoaccess.gov/cfr/retrieve.html and 23 U.S.C 323 at <http://uscode.house.gov/search/criteria.php>

Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$2,500 or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).

Credit to the matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the agency. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of the project. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

Information Source: Title 23 CFR 710.505 on Real property donations at www.gpoaccess.gov/cfr/retrieve.html

Donated property must be valued by a qualified appraiser. The appraiser must appraise the property in conformity with the provisions of 49 CFR 24.103 and 24.104 subject to certain conditions. Refer to FHWA Office of Real Estate Services–Project Development

Guide at www.fhwa.dot.gov/realstate/pdq6.htm section 6.0.1.1 on the appraisal of a donation.

The local government must provide documentation for the real property donations which includes:

- (1) Owner informed by the agency of his/her right to receive just compensation for the property and his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$2,500, or the State appraisal waiver limit approved by the FHWA, whichever is greater.
- (2) Certification by the agency that donations received prior to the approval of the NEPA document meet environmental requirements as specified in 23 U.S.C. 323(d) and regulations in 23 CFR 710.505 were satisfied.
- (3) Evidence supporting the current fair market value (e.g., copies of the Certificates of Value or Review Appraiser Statements) as determined in 23 CFR 710.505.

Refer to the following for additional information and guidance on real property donations:

FHWA Office of Real Estate Services—Project Development Guide at www.fhwa.dot.gov/realstate/pdq6.htm

Contact the UDOT Division of Right of Way

1.8 Calculation of Donation Credit for Non-Federal Match

When calculating the pro rata share of project costs, the donation should be treated the same as a cost incurred. The donation must qualify as a participating cost meeting eligibility standards and be within the scope of the project. The value of the donation is added to the total project cost and the appropriate pro rata calculation made. However, in the case of a large donation, the amount of Federal funds obligated cannot exceed the actual project costs. The value of the donation must be included in the total project value; it cannot both reduce the cost of the project and be credited towards the required non-Federal share of the remaining project costs.

For example, where an 80-20 project has incurred cash costs of \$1 million and the value of the donations total \$100,000, the project would have a total value of \$1,100,000. To determine the Federal/State pro rata shares, apply the appropriate ratio to the total value of the project as follows:

Actual cash outlay for project costs incurred	\$1,000,000
Value of donations (includes property, funds, materials, and services)	+100,000
Total value of project	\$1,100,000
Federal pro rata share of total value of project (80% of \$1,100,000)	\$ 880,000
State pro rata share of total value of project (20% of \$1,100,000)	+220,000
Total value of project	\$1,100,000
State pro rata share of total value of project	\$ 220,000
Value of donations	-100,000
Actual cash outlay by State for project	\$ 120,000

If the value of a donation exceeds the local government pro rata share of the total value of the project, then the Federal pro rata share is limited to the amount of actual cash outlay for the project.

For example if the value of the donation is \$500,000, then the Federal Share is limited to the amount of actual cash outlay for the project calculated as follows:

Actual cash outlay for project costs incurred	\$1,000,000
Value of donations (includes property, funds, materials, and services)	<u>+500,000</u>
Total value of project	\$1,500,000
Federal pro rata share of total value of project (80% of \$1,500,000)	\$1,200,000
The Federal obligation amount is limited to the actual cash outlay	\$1,000,000

Information Source: FHWA Office of Finance and Budget memorandum dated 02/04/97